319. Cotton vs. Weyerhauser, 147 Pac. (2d) 299. Res adjuticata is a valid defense. D. & L. Production Company vs. Cuniff, 8 L.C. 62,312.

There is no limitation in the Fair Labor Standards Act on claims arising thereunder, and yet the courts uniformly hold that the statutes of limitation of the several states apply. Loggins vs. Steel Construction Company (C.C.A. 5) 129 Fed. (2d) 118. Duncan vs. Montgomery Ward, 42 Fed. Sup. 879. Klotz vs. Ippolito, 40 Fed. Sup. 422. Abram vs. San Joaquin Cotton Oil Co., 46 Fed. Sup. 969.

All courts which have passed on the question have held that the statutes of limitation of the several states apply to claims under the Fair Labor Standards Act. These statutes are nothing more nor less than the public policy of the several states in the interest of repose to prohibit the litigation of stale demands. If, therefore, the public policy of each state is to be enforced in this respect, a fortiori, the public policy of *all* states and the Federal Government to encourage the peaceful settlement of claims by agreements of accord and satisfaction will likewise be enforced.

5.

SETTLEMENT OF CLAIMS ARISING UNDER OTHER STATUTES INVOLVING PUBLIC POLICY ARE VALID

The underlying philosophy and legal effect of the decision in this case is in conflict with the doctrine that settlement of controversies should be encouraged and is in conflict with the application of that doctrine to many statutes involving public policy.

SHERMAN ANTI-TRUST LAW

No distinction can be drawn either in the spirit, principle or

verbiage of the Fair Labor Standards Act and the Sherman Anti-Trust Law. The latter Act declares that every contract in restraint of interstate commerce is illegal, and that any person injured by reason of anything forbidden by that law "*shall recover* threefold the damages by him sustained; and the costs of suit, including a reasonable attorney's fee." (Emphasis supplied.) 15 U.S.C.A. Sections 1 to 15.

Section 6 of the Fair Labor Standards Act provides that "Every employee *shall pay* to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates * * * ."

The Anti-Trust Laws are as much affected with the public interest as is the Fair Labor Standards Act, and yet agreements of accord and satisfaction in settlement of disputed claims under the Anti-Trust Law have uniformly been held valid. Radio Corporation vs. Raytheon Co. 296 U.S. 459. Clabaugh vs. Southern Wholesale Grocers Association (C.C.A. 5) 181 Fed. 706. Westmoreland Asbestos Co., Inc., vs. Johns-Manville Corporation, 39 Fed. Sup. 117.

USURY STATUTES

Usury statutes are affected with public policy. Yet it is uniformly held that there may be an accord and satisfaction of the right of action for usury paid even though the sum advanced on such an agreement is less than the usury received, where there is a bona fide controversy between the parties. 15 C.J.S. 715. Rogers vs. Ball, 54 Ga. 15. Parker vs. Fulton Loan, 46 Ga. 166.

MERCHANT MARINE ACT

For reasons of public policy seamen are the special wards of the Courts of Admiralty, and their rights under the Merchant Marine Act are likewise affected with public policy. Yet they

may release claims for liability for personal injuries arising under the Act. Garrett vs. Moore-McCormick, 317 U.S. 239; The S. S. Standard, 103 Fed. (2d) 437.

FEDERAL EMPLOYER'S LIABILITY ACT

Settlements are uniformly recognized under the Federal Employer's Liability Act, which is a statute involving public policy. Mellon vs. Goodyear, 277 U.S. 335; Flynn vs. Railroad Co. 283 U.S. 53.

WORKMEN'S COMPENSATION ACTS

The Workmen's Compensation Acts of the several states either expressly or impliedly permit the injured employee and the employer to enter into private agreement as regards the compensation to which the employee is entitled, and such agreements are encouraged by the Courts. 71 Corpus Juris 933.

6.

BONA FIDE SETTLEMENTS UNDER THE FAIR LABOR STANDARDS ACT ARE VALID

In David vs. Atlantic Company, 69 Ga. App. 643; 26 S.E. (2d) 650, the Georgia court sustained the validity of a contract of accord and satisfaction identical with that now before the court. In Gangi vs. Schulte, 53 Fed. Sup. 844, the District Court for the Southern District of New York said: "It is my own view that there is no conflict between the public policy of the statute and the *equally well established policy of the law to encourage the amicable adjustment of disputes by arms-length negotiation.* I find nothing in the statute which prohibits the settlement of such a past due claim, especially if the amount paid in settlement is at least equal to the unpaid overtime com-

pensation." (Emphasis supplied). See also Sissel vs. Great Atlantic & Pacific Tea Company, 37 Fed. Sup. 913.

7.

CASES RELIED ON BY RESPONDENTS DISTINGUISHED

The only authorities cited in the majority opinion are: Tennessee Coal Co. vs. Muscoda Local, 321 U.S. 590; Guess vs. Montague, 140 Fed. (2d) 500; Seneca Coal & Coke Co. vs. Lofton, 136 Fed. (2d) 359; Overnight Motor Company vs. Missell, 316 U.S. 572. None of the authorities cited support the ruling made. The Tennessee Coal case involved only the question of "portal to portal" pay; the Overnight Motor case dealt only with the right to overtime of an employee working irregular hours; and in Guess vs. Montague, and the Seneca Coal case, there was no question of a bona fide controversy between the parties.

In some of the cases on which respondents rely will be found isolated comments and dicta which, taken alone, appear to give some support to their contentions, but when these cases are considered in their entirety the distinction is obvious. On careful examination, it will be found that in none of them was there a bona fide controversy of law and fact existing between the parties. Though, as petitioner contends, no Circuit Court has decided the exact question here presented, the decisions dealing with the defense of accord and satisfaction under the Fair Labor Standards Act are conflicting and confusing.

> "As to the appellants claim of accord and satisfaction, we are not now required to choose between the conflicting view of other Circuit Courts of Appeal. See Fleming vs. Warshawsky & Co. 7 Cir. 123 Fed. 2d 622; Guess vs. Montague, 4 Cir., Sept. 16, 1943, 140 Fed. 2d 500." Rigopoulos vs. Kervan, 140 Fed. 2d 506-507-8.

In Rigopoulos vs. Kervan, 47 Fed. Sup. 576, the District Court struck a plea of accord and satisfaction, stating that *no facts were pleaded to show an honest dispute between the parties, and that in the absence of such allegation, the defense of accord and satisfaction was insufficient.* On appeal, the Circuit Court in the decision reported in 140 Fed. (2d) 506 affirmed the trial court and said "There was nothing in dispute between the parties at the time the defendant made his payments; hence there was no consideration for an accord even at common law."

In Fleming vs. Warshawsky, (C.C.A. 7) 123 Fed. (2d) 622, it appears that the administrator and the defendant stipulated to enter a consent judgment enjoining the defendant from violations and providing that he should pay his employees certain amounts. The defendant company failed to comply and was cited for contempt and defended the contempt action on the ground that "without solicitation or other effort on their part, or any one authorized by them in that behalf, certain employees * * * voluntarily and without coercion relinquished their said claims." Here, then, the employees simply signed a voluntary waiver or release upon no consideration whatever and without any controversy existing.

Likewise, in Guess vs. Montague (C.C.A. 4) 140 Fed. (2d) 500, it affirmatively appears that there was no bona fide dispute. The court said (p. 505) "These plaintiffs had two claims, one for the balance of the minimum wages and overtime compensation fixed by law, the other for liquidated damages in a like amount. There was doubt in the mind of the defendant as to his liability for either and *plaintiffs were not then even claiming that he was liable for either.*" (Emphasis supplied)

In Birbalas vs. Cuneo Printing Industries, Inc. (C.C.A. 7) 140 Fed. (2d) 826, the court expressly stated that there was no evidence of an existing bona fide dispute.

CONCLUSION

That the question be answered authoritatively is important to the public. It is important to business generally and especially to that ever increasing part of the business world engaged in interstate commerce or the production of goods therefor.

It is important to the Courts and to the Administrator of the Wage-Hour Division of the Department of Labor. They should know whether they may lawfully permit honest settlements when both litigants want to settle or if they must require every disputed claim to be litigated to final judgment.

Most of all, it is important in the interest of fair and honest dealing and the public morals. Shall contracts continue to be binding or have they become only "scraps of paper"? Was it the intention of Congress "to drive so wide a breach between law and morals"? Gangi v. Schulte, supra.

All concerned — and they are many — should know the answer.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fifth Circuit should be granted.

HUGHES SPALDING,
JOHN A. SIBLEY,
SUMTER M. KELLEY,
WILLIAM K. MEADOW,
Attorneys for Petitioner.

Of Counsel:

SPALDING, SIBLEY & TROUTMAN,
434 Trust Company of Georgia Building,
Atlanta 3, Georgia.

APPENDIX

Pertinent provisions of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, 29 U.S.C. Section 201, et seq.) read as follows:

"Sec. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates * * * "

"Sec. 7 (a) No employer shall, except as otherwise provided in this section, employ any of his employees who is engaged in commerce or in the production of goods for commerce—

"(1) for a workweek longer than forty-four hours during the first year from the effective date of this section, * * *

unless such employee receives compensation for his employment in excess of the hours above specified at a rate of not less than one and one-half times the regular rate at which he is employed.

"Sec. 16 (b) Any employer who violates the provisions of section 6 or section 7 of this Act shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situ-

ated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

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NO. 922

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ATLANTIC COMPANY,
Petitioner,

vs.

A. BROUGHTON, et al,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR REHEARING

HUGHES SPALDING,
JOHN A. SIBLEY,
SUMTER M. KELLEY,
WILLIAM K. MEADOW,
Attorneys for Petitioner.

Of Counsel:

SPALDING, SIBLEY & TROUTMAN,
434 Trust Company of Georgia Building,
Atlanta, Georgia.